

APPEAL NO. 023275
FILED JANUARY 29, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on November 18, 2002. With regard to the only issue before him, the hearing officer determined that the appellant's (claimant) compensable right ankle injury does not extend to or include the claimant's lumbar spine.

The claimant appeals, contending that the hearing officer failed to accord his testimony the weight it deserved and that the hearing officer had failed to follow the recommendation of the benefit review officer (BRO). The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed.

We will first observe that according to Section 410.031, a BRO merely makes a recommendation regarding the unresolved issue and the hearing officer is not obligated to follow that recommendation in making his decision pursuant to Section 410.168.

On the merits, the claimant testified that he injured both his right ankle and low back when he slipped and fell at work. The carrier accepted a right ankle sprain. The hearing officer noted that testimony, but went on to comment that the early medical records make no mention of back complaints and, in fact, note that the claimant's neck and back were examined and checked to be "non-tender" with normal inspection. The claimant's complaints of back pain were first noted by a chiropractic clinic some two or three weeks later.

The 1989 Act provides that the hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer may believe all, part, or none of the testimony of any witness, including that of the claimant. Aetna Insurance Company v. English, 204 S.W.2d 850 (Tex. Civ. App.-Fort Worth 1947, no writ). Where there are conflicts in the evidence, the hearing officer resolves the conflicts and determines what facts the evidence has established. As an appeals body, we will not substitute our judgment for that of the hearing officer when the determination is not so against the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); Texas Workers' Compensation Commission Appeal No. 950456, decided May 9, 1995. The hearing officer's determinations are sufficiently supported by the evidence.

Accordingly, the hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **NORTH AMERICAN SPECIALTY INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION SYSTEM
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Michael B. McShane
Appeals Panel
Manager/Judge

Terri Kay Oliver
Appeals Judge